

Criminal measures aimed at ensuring the enforcement of intellectual property rights

2005/0127(COD) - 12/07/2005 - Initial legislative proposal

PURPOSE: introduction of measures aimed at ensuring the enforcement of intellectual property rights.

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: Counterfeiting and piracy, and infringements of intellectual property in general, are a constantly growing phenomenon which nowadays has an international dimension, since they are a serious threat to national economies and governments. The disparities between the national systems of penalties, apart from hampering the proper functioning of the internal market, make it difficult to combat counterfeiting and piracy effectively. In addition to the economic and social consequences, counterfeiting and piracy also pose problems for consumer protection, particularly when health and safety are at stake. Increasing use of the Internet enables pirated products to be distributed instantly around the globe. Lastly, this phenomenon appears to be increasingly linked to organised crime. Combating this phenomenon is therefore of vital importance for the Community. Counterfeiting and pirating have become lucrative activities in the same way as other large-scale criminal activities such as drug trafficking. There are high potential profits to be made without risk of serious legal penalties. Additional provisions to strengthen and improve the fight against counterfeiting and piracy are therefore necessary to supplement Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights. In addition to the civil and administrative measures, procedures and remedies provided for in Directive 2004/48/EC, criminal penalties also constitute, in appropriate cases, a means of enforcing intellectual property rights.

A start was made on harmonisation with the entry into force of the TRIPS agreement which lays down minimum provisions on means of enforcing trade-related intellectual property rights. These include the implementation of criminal procedures and criminal penalties, but there are still major disparities in the legal situation in the Community which do not allow the holders of intellectual property rights to benefit from an equivalent level of protection throughout the Community. As regards criminal penalties, there are considerable differences, particularly as regards the level of punishment laid down by national legislation.

As regards impact on fundamental rights, it should be emphasised that the direct objective of this initiative is to implement Article 17(2) of the Charter of Fundamental Rights which states that “Intellectual property shall be protected”; it does this by approximation of legislation while respecting the different legal traditions and systems of the Member States as well as other fundamental rights and principles recognised by the Charter. The level of sentences has been chosen pursuant to the seriousness of the different forms of wrongful conduct, in accordance with Article 49(3) of the Charter to the effect that sentences should not be disproportionate to the offence.

Since this objective may be better achieved at Community level, the Community may take measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty.

A framework decision is required to supplement existing provisions as regards matters which fall under Title VI of the TEU (see procedure 2005/0128(CNS)).